

MICHIGAN DEPARTMENT OF TRANSPORTATION
TERMS AND CONDITIONS FOR
TITLE INFORMATION, TITLE CERTIFICATES, AND ESCROW SERVICES

These Terms and Conditions for Title Information, Title Certificates, and Escrow Services set forth the standard requirements that govern Real Estate services contracts issued and administered by the Michigan Department of Transportation (MDOT).

1. Definitions

Contract Means the Real Estate services contract between MDOT and the Contractor.

Exhibit A Means Exhibit A of the Contract.

Services Means the professional work set forth in the Contract between MDOT and the Contractor.

2. Each Contract will define the scope of work, the effective date (on which the Contractor may begin work), the expiration date (on which the work must be completed), the maximum compensation for the work, and the basis of payment. The Contract will detail the specific services being ordered and describes and locates the individual ownership involved. Closings will be completed as set forth in Section 7.
3. The Contractor will not perform services that are not included in the Scope of Services or Exhibit A of the Contract. The Contractor acknowledges that MDOT employees, including any MDOT's Region Real Estate Agent, do not have the authority to verbally assign work to the Contractor. In the event that any MDOT employee attempts to assign work under the Contract that is not included in the Scope of Services in Exhibit A, the Contractor will refuse to do any such work and will contact MDOT's Contract Administrator.
4. The Contractor will perform and carry out in a satisfactory manner the Services with regard to Real Property being acquired and disposed of by MDOT through its Real Estate Administrator or designated representative thereof. The Services requested by MDOT will be performed in accordance with Attachment A, dated December 13, 1996, pages 1 through 19, attached hereto and made a part hereof. Said Services include, but are not limited to, the following:

- a. Providing a preliminary commitment for title insurance and two (2) interim commitments.
 - b. Performing escrow services and all closing procedures, including preparation of closing statements.
 - c. Making all payoffs to discharge and release encumbrances, such as those listed below, and recording the necessary instruments to evidence the discharge or release of those encumbrances as encumbrances on the land. MDOT will identify the encumbrances that are to be released with respect to each parcel of land in the closing instructions.
 - i. Mortgages
 - ii. Judgments, liens, and levies
 - iii. Internal Revenue tax liens
 - iv. County or city taxes, including interest and penalties
 - v. Any special assessment, such as for water mains, drains, sewers, etc.
 - vi. Land contracts
 - vii. Tax titles
 - d. Recording the instruments submitted by MDOT and designated to be recorded in the closing instructions, such as:
 - i. Affidavits
 - ii. Quit Claim Deeds
 - iii. Death Certificates
5. The Contractor will perform all Services in conformity with MDOT's applicable standards, including these terms and conditions.
6. The Contractor will furnish all data, equipment, and materials not otherwise provided for the performance of the Services.
7. The Contractor will contact parties to a closing(s) within ten (10) working days after receipt of the closing package from MDOT to schedule the closing. In the event the Contractor cannot schedule the closing date, Contractor will advise, in writing, MDOT's local Region Real Estate Agent of the reason for delay and provide said Agent with a revised date of closing. Failure to initiate action, as herein indicated, will result in action by MDOT, as set forth in Section 13.

8. With regard to audits and record-keeping,
 - a. The Contractor will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under the Contract (RECORDS). Separate accounts will be established and maintained for all costs incurred under the Contract.
 - b. The Contractor will maintain the RECORDS for at least three (3) years from the date of final payment made by MDOT under the Contract. In the event of a dispute with regard to the allowable expenses or any other issue under the Contract, the Contractor will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
 - c. MDOT or its representative may inspect, scan, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
 - d. If any part of the work is subcontracted, the Contractor will assure compliance with subsections (a), (b), and (c) above for all subcontracted work.
9. The Contractor will provide for Workers' Compensation Insurance at the Contractor's own cost and expense. (Not required for one person companies.)
10. If MDOT discloses its confidential information to the Contractor, the Contractor will maintain such information as confidential. Information provided by MDOT will be deemed confidential if it is marked confidential or stated in writing to be confidential. The above obligations of confidentiality will not apply to:
 - a. Information for which MDOT gives prior written permission for publication or use.
 - b. Information that is required to be disclosed based on court order.

A violation of this provision will be considered a breach of the Contract, and MDOT may terminate the Contract under the provisions of Section 19(b).

News releases pertaining to the Contract or the Services to which it relates will not be made without prior written approval from MDOT, and then only in accordance with explicit instructions from MDOT. News releases made without MDOT's approval will be considered a breach of the Contract, and MDOT may terminate the Contract under the provisions of Section 19(b).

11. The Contractor will submit billings for the Services to MDOT. Billings will be submitted no more frequently than once a month. The Contractor agrees that the costs reported to MDOT for the Contract will represent only those items that are properly chargeable in accordance with the Contract. The Contractor also certifies that it has read the Contract

terms and has made itself aware of the applicable laws, regulations, and terms of the Contract that apply to the reporting of costs incurred under the terms of the Contract.

12. MDOT will provide the Contractor access to MDOT standards and information in its possession and related to the Services that the Contractor specifically requests, except for such standards and information as the Contractor is specifically required to provide for including any documents or information for work listed in the Contract.
13. MDOT will make payment to the Contractor in accordance with the following:
 - a. Compensation for the Services will be on a unit price per unit of work basis.
 - b. Payments will be subject to audit and will be made no more frequently than once a month.
 - c. All payments made to the Contractor will contain the Contractor's escrow, commitment, or title reference number disclosed on the Contractor's title commitment or search forms provided to MDOT.
 - d. If the Contractor fails to initiate closing of a parcel within ten (10) working days after receipt of the closing package authorizing said work or has not submitted a revised closing date, as specified in Section 7, MDOT will deduct from the amount to be paid to the Contractor for performance of the work set forth in the closing package a sum equal to ten percent (10%) of the escrow closing fee for each work day elapsing after said ten (10) day period has expired and prior to the date the Contractor commences Services or submits a revised closing date.
 - e. The Contractor will not be paid for costs attributable to correction of errors and omissions by the Contractor.
 - f. Reimbursement for costs incurred is subject to the cost criteria set forth in 48 CFR, Federal Acquisition Regulations, Part 31, incorporated herein by reference as if the same were repeated in full herein.
14. MDOT funds in the Contract made available through legislative appropriations are based on projected revenue estimates. MDOT may reduce the amount of the Contract if the revenue actually received is insufficient to support the appropriation under which the Contract is made.
15. The parties will consider the Services to be complete when accepted by MDOT. Such acceptance by MDOT is not intended to nor does it relieve the Contractor of any of its obligations and responsibilities herein.
16. Any change in the scope, character, or term of the Contract or in the maximum amount of the Contract will only be by award of a prior written amendment to the Contract by the

parties. The maximum dollar amount of the Contract will not be increased without an accompanying and comparable increase in the Scope of Services.

17. The Contractor's signature on the Contract constitutes the Contractor's specific agreement that all provisions of the Contract, including these Terms and Conditions, unless otherwise amended, are continued through any time period for which the Contract is extended by way of a time extension amendment. Any such extension will not operate as a waiver by MDOT of any of its rights herein set forth.
18. Amounts of insurance to be issued are based on consideration of the deed and/or easement to MDOT. No Title Policy will be in an amount of less than \$1,000.00. MDOT is to be covered for all claims or losses for the full amount of the Title Policy, pursuant to the terms of the policy.
19. MDOT may terminate the Contract for convenience or cause, as set forth below, before the Services are completed. Written notice of termination will be sent to the Contractor. The Contractor will be reimbursed in accordance with the following:

a. **Termination for Convenience:**

If MDOT terminates the Contract for convenience, MDOT will give the Contractor written notice of such termination thirty (30) days prior to the date of such termination, and the Contractor will be reimbursed for all costs incurred up to receipt of said Notice of Termination. Such reimbursement will be as set forth in Section 13. MDOT will receive the work product produced by the Contractor under the Contract up to the time of termination, prior to the Contractor being reimbursed. In no case will the compensation paid to the Contractor for partial completion of Services exceed the amount the Contractor would have received had the Services been completed.

b. **Termination for Cause:**

In the event the Contractor fails to complete any of the SERVICES in a manner satisfactory to MDOT, and/or discloses MDOT's confidential information, in violation of the provisions of Section 10, and/or makes any public relations communications and/or products that are intended for an external audience without prior written approval from MDOT, as set forth in Section 36, MDOT may terminate this Contract for cause. Written notice of termination will be sent to the Contractor. The Contractor will be reimbursed as follows:

The Contractor will be reimbursed for Services completed up to receipt of said Notice of Termination. MDOT may pay a proportional share for the work product. The value of such partially completed work product will be determined by MDOT based on actual costs incurred up to the estimated value of the work product received by MDOT, as determined by MDOT. MDOT will receive the work product produced by the Contractor under the Contract up to the time of

termination, prior to the Contractor being reimbursed. In no case will the compensation paid to the Contractor for partial completion of the Services exceed the amount the Contractor would have received had the Services been completed.

In the event that termination by MDOT is necessitated by any wrongful breach, failure, default, or omission by the Contractor, MDOT will be entitled to pursue whatever remedy is available to it, including, but not limited to, withholding funds or off-setting against funds owed to the Contractor under the Contract, as well as any other existing or future contracts between the Contractor and MDOT, for any and all damages and costs incurred or sustained by MDOT as a result of its termination of the Contract due to the wrongful breach, failure, default, or omission by the Contractor. In the event of termination of the Contract, MDOT may procure the professional Services from other sources and hold the Contractor responsible for any damages or excess costs occasioned thereby.

20. The Contractor specifically agrees that MDOT retains the right to audit the RECORDS of the Contractor. Any adjustments that result from any such audits are specifically limited to those costs incurred that are reimbursed on an actual costs basis.

In the event that an audit performed by or on behalf of MDOT indicates an adjustment to the costs reported under the Contract or questions the allowability of an item of expense, MDOT will promptly submit to the Contractor a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the Contractor at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the Contractor will (a) respond in writing to the responsible Bureau of MDOT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to MDOT a written explanation as to any questioned or no opinion expressed item of expense (RESPONSE). The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the Contractor may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the contract. The Contractor agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to finally disallow any items of questioned or no opinion expressed cost.

MDOT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If MDOT determines that an overpayment has been made to the Contractor, the Contractor will repay that amount to MDOT or reach agreement with MDOT on a repayment schedule within thirty (30) days after the date of an invoice from MDOT. If the Contractor fails to repay the overpayment or reach agreement with MDOT on a

repayment schedule within the thirty (30) day period, the Contractor agrees that MDOT will deduct all or a portion of the overpayment from any funds then or thereafter payable by MDOT to the Contractor under the Contract or any other agreement or payable to the Contractor under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by MDOT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The Contractor expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest MDOT's decision only as to any item of expense the disallowance of which was disputed by the Contractor in a timely filed RESPONSE.

21. No portion of the Services, as herein defined, will be assigned. No portion of the Services, as herein defined, will be sublet, except with the prior written consent of MDOT and the FHWA. Consent to sublet any portion of the Services will not be construed to relieve the Contractor of any responsibility or obligation under or for the fulfillment of the Contract. All contracts, including amendments with subcontractors, in excess of Twenty Five Thousand Dollars (\$25,000.00) will be submitted to MDOT and the FHWA for approval prior to award and will contain all applicable provisions of the Contract. Any such approvals will not be construed as a warranty of the subcontractor's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity.
22. The Contractor agrees to pay each subcontractor for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the Contractor receives from MDOT. The Contractor agrees further to return retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement from these time frames may occur only upon receipt of written approval from MDOT. These requirements are also applicable to all sub-tier subcontractors and will be made a part of all subcontract agreements.

This prompt payment provision is a requirement of 49 CFR, Part 26, as amended, and does not confer third-party beneficiary right or other direct right to a subcontractor against MDOT. This provision applies to both Disadvantaged Business Enterprise (DBE) and non-DBE subcontractors.

The Contractor further agrees that it will comply with 49 CFR Part 26, as amended, and will report any and all DBE subcontractor payments to MDOT semi-annually in the format set forth in Appendix G, dated September 2015, attached hereto and made a part hereof, or any other format acceptable to MDOT.

23. With regard to non-discrimination and DBE requirements,
- a. In connection with the performance of Services under the Contract, the Contractor (hereinafter in Appendix A referred to as the “contractor”) agrees to comply with the State of Michigan provisions for “Prohibition of Discrimination in State Contracts” as set forth in Appendix A, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to the Contract.
 - b. During the performance of the Contract, the Contractor, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the “contractor”) agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to the Contract.
 - c. The Contractor will carry out the applicable requirements of MDOT’s DBE program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C, dated October 2, 2014, attached hereto and made a part hereof.
24. Public Act 533 of 2004 requires that payments under the Contract be processed by electronic funds transfer (EFT). The Contractor is required to register to receive payments by EFT at the SIGMA Vendor Self Service (VSS) website (www.michigan.gov/SIGMAVSS).
25. The Contractor specifically agrees that in the performance of the Services herein enumerated, by itself, or by an approved subcontractor, or by anyone acting in its behalf, it will comply with any and all state, federal, and local statutes, ordinances, and regulations and will obtain all permits that are applicable to the entry into and the performance of the Contract.
26. In addition to the protection afforded by any policy of insurance, the Contractor agrees to indemnify, defend, and save harmless the State of Michigan, the Michigan State Transportation Commission, MDOT, the FHWA, and all officers, agents, and employees thereof:
- a. From any and all claims by persons, firms, or corporations for labor, services, materials, or supplies provided to the Contractor in connection with the Contractor’s performance of the Services, and
 - b. From any and all claims for injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation, response and cleanup costs, and for attorney fees and related costs arising out of, under, or by

reason of the Contractor's performance of the Services under the Contract, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents, or its employees.

MDOT will not be subject to any obligations or liabilities by contractors of the Contractor or their subcontractors or any other person not a party to the contract without its specific consent and notwithstanding its concurrence with or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the Contractor will take no action or conduct that arises either directly or indirectly out of its obligations, responsibilities, and duties under the Contract that results in claims being asserted against or judgments being imposed against the State of Michigan, MDOT, the Michigan State Transportation Commission, and/or the FHWA, as applicable.

In the event that the same occurs, it will be considered as a breach of the Contract, thereby giving the State of Michigan, MDOT, the Michigan State Transportation Commission, and/or the FHWA, as applicable, a right to seek and obtain any necessary relief or remedy, including, but not limited to, a judgment for money damages.

27. The Contractor's signature on the Contract constitutes the Contractor's certification of "status" under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549.

The certification that is outlined as a part of these Terms and Conditions as Attachment A is Appendix A of 49 CFR Part 29 and applies to the Contractor (referred to in Appendix A as "the prospective primary participant").

The Contractor is responsible for obtaining the same certification from all subcontractors under the Contract by inserting the following paragraph in all subcontracts:

"The subcontractor's signature on this Contract constitutes the subcontractor's certification of 'status' under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549. The certification included as a part of this Contract as Attachment B is Appendix B of 49 CFR Part 29."

This certification is required of all subcontractors, testing laboratories, and other lower tier participants with which the Contractor enters into a written arrangement for the procurement of goods or services provided for in the Contract.

28. For contracts in excess of One Hundred Thousand Dollars (\$100,000.00):

- a. The Contractor's signature on the Contract constitutes the Contractor's certification that to the best of his or her knowledge and belief no federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," pursuant to Section 1352, Title 31 USC, in accordance with its instructions.
 - c. The Contractor will require that the language of this certification be included in the award documents for all third-party agreements (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 USC. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00) for each such failure.
29. In accordance with 1980 PA 278, MCL 423.321 et seq., the Contractor, in the performance of the Contract, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than three (3) occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 USC 158. MDOT may void the Contract if the name of the Contractor or the name of a subcontractor, manufacturer, or supplier utilized by the Contractor in the performance of the Contract subsequently appears in the register during the performance of the Contract.

30. For contracts in excess of One Hundred Fifty Thousand Dollars (\$150,000.00):
- a. The Contractor stipulates that any facility to be utilized in the performance of the Contract, unless such Contract is exempt under the Clean Air Act, as amended (42 USC 7401 *et seq.*, as amended, including Pub. L. 101-549), and under the Clean Water Act, as amended (33 USC 1251 *et seq.*, as amended, including Pub. L. 100-4), and/or under Executive Order 11738 and regulations in implementation thereof (40 CFR Part 15), is not listed on the date of Contract award on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR Part 15.20.
 - b. The Contractor agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to the Contractor and the SERVICES under the Contract.
 - c. The Contractor will promptly notify MDOT and the U.S. EPA, Assistant Administrator for Enforcement, of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities.
 - d. The Contractor agrees to include or cause to be included the requirements of the preceding three (3) paragraphs, (a), (b), and (c), in every nonexempt subcontract.
31. The Contractor agrees that no otherwise qualified individuals with disabilities in the United States, as defined in the Americans with Disabilities Act, 42 USC 12101 *et seq.*, as amended, and regulations in implementation thereof (29 CFR Part 1630), will, solely by reason of their disabilities, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under the Contract.
32. With regard to claims based on goods or services that were used to meet the Contractor's obligation to MDOT under the Contract, the Contractor hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT.

The Contractor will require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT with regard to claims based on goods or services that were used to meet the Contractor's obligation to MDOT under the Contract due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT as a third-party beneficiary.

The Contractor will notify MDOT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the Contractor's

obligation to MDOT under the Contract may have occurred or is threatened to occur. The Contractor will also notify MDOT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services

33. The Contractor warrants that it has not employed or retained any company or person, other than bonafide employees working solely for the Contractor, to solicit or secure the Contract and that it has not paid or agreed to pay any company or person, other than bonafide employees working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, MDOT will have the right to void the Contract without liability and receive reimbursement for all compensation paid under the Contract or, at its discretion, to deduct from the contract compensation or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
34. The Contractor will not engage on a full-time, part-time, or other basis during the period of the Contract any professional or technical personnel who are in the employ of the FHWA or MDOT, except regularly retired employees, without the knowledge and consent of the employer of such person.
35. The parties agree that the Contractor and any agents and employees of the Contractor, in the performance of the Services under the Contract, will act in an independent capacity and are not officers or employees of the State of Michigan.
36. Any public relations communications and/or products pertaining to the Contract or the Services hereunder that are intended for an external audience will not be made without prior written approval from MDOT, and then only in accordance with explicit instructions from MDOT. Examples of public relations communications and/or products may include the following:
 - a. Use of the MDOT logo;
 - b. Brochures, flyers, invitations, programs, or any other printed materials intended for an external audience;
 - c. Postings on social media sites or websites;
 - d. New or updated video, digital versatile disk (DVD), or video sharing productions;
 - e. Exhibits or presentations.

A violation of this provision constitutes a breach of the Contract, and MDOT may terminate the Contract under the provisions of Section 19(b).

37. Any and all documents referenced in these Terms and Conditions for Title Information, Title Certificates, and Escrow Services are hereby incorporated by reference and made a part hereof, as if attached hereto.
38. In case of any discrepancies between the body of the Contract and any exhibits hereto, the body of the Contract will govern. In case of any discrepancy between the Contract and these Terms and Conditions, the Contract will govern.

ATTACHMENT A
INSTRUCTIONS TO TITLE COMPANIES
December 13, 1996

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INTRODUCTION

Right of Way Acquisition

If we need title commitments on a project we plan to purchase, our Region personnel will contact you with tax maps, plans, or other information needed to identify the area in question. This request could be for as many as 30 properties or more. Once we begin negotiations with the owners of these properties, you will be requested to update the title evidence so we can be sure we are negotiating with all parties of interest. Sometimes delays in the project could mean a significant time lapse between the original order and an update.

Once we have reached agreement with the property owner and an option is signed, you will receive a packet of closing papers by mail. This will allow you to start your closing process and contact the owners to schedule a closing. The funds will be sent to you directly from the State Treasurer's office about 10 days after you receive the closing papers.

We normally do not acquire all of a person's ownership. Therefore, partial releases of mortgages and liens are often required. At the time you receive the closing papers our agents will have made contact with all owners, mortgagees, land contract vendors, and lien holders. Agreements will have been made to clear their rights from the portion we are purchasing. You should only have to contact them to get executed documents and send them funds in the agreed upon amounts.

You will be responsible for clearing all liens, including real estate taxes and special assessments, IRS levies, judgments, and land contracts. You will also obtain all signatures on the deed, obtain mortgage releases, record all instruments, disburse the funds and issue a title policy. You will not be responsible to clear easements or rights of way existing on the purchased property. If it is necessary to clear these rights they are treated as separate acquisitions.

Advancing Money for Miscellaneous Expenses

When closing a parcel, we typically send you only the purchase price of the property, and the transfer tax. Additional expenses, recording fees, etc., are not included in the funds. Therefore, we ask you to advance these amounts of money, if nominal, and include them in your billing to us. This way we can process one amount to you, rather than several. When this is not feasible, we send the property owner a separate amount to cover these expenses after the closing has taken place.

Condemnation Parcels

When we are unable to come to an agreement with the property owners, we institute condemnation proceedings. You may be asked to update title during this process. The compensation for condemnation parcels is processed by our Attorney General's Office. You are

not involved in a “closing” on these parcels. Once title has passed to MDOT and our condemnation instrument is submitted to the register of deeds, you will receive a letter with a copy of the Declaration of Taking (title transferring instrument) and case number, from our Lansing office requesting a final title policy. The policies are requested shortly after the case is filed. However, we do not expect you to issue the policy until the Declaration of Taking has been recorded.

When complete, these policies are to be sent to the Region office.

Escrow Services for Relocation of Tenants/Owners

You may be asked to act as escrow agent for relocation payments.

In these situations you will be given money to hold in an escrow account. An MDOT staff person will give you specific instructions for the release of the money.

Payment for Your Services

You will process a bill for your services and reimbursements on a monthly basis. The billing for these items is to be sent to the Region office for processing (see Billing for Services).

REQUIREMENTS FOR TITLE COMMITMENTS

The following is a list of information we require to be included either on, or with each title commitment we order:

1. Legal description of the tract of land of which the parcel to be acquired is a part.
2. Name and last known address of owner disclosed by the public records.
3. Indicate the title vesting deed with grantor, date of conveyance, recording date, and the Liber and page. (Include a copy of the deed.)
4. Any mortgages, land contracts, liens, easements, or other encumbrances shall be noted, and copies furnished.
5. Name and address of who taxes are assessed to, and status of tax payment. Include computer tax code.)
6. Describe contiguous property of same ownership, or give reference to the deed that does describe contiguous property (include a copy), if any, or write a statement that your search disclosed none.
7. Also, furnish copies of any plat restrictions which might affect the parcel.
8. Place our Control Section number and Job number on the first page of the title commitment and on the invoice.
9. Include a copy of boundary survey if one is found.

CLOSING PROCEDURES

Closing MDOT acquisitions are different from private transactions in several ways. (1) We pay all expenses necessary for them to transfer title. This includes transfer tax, recording fees (including those on prior instruments), attorney fees to draft documents, mortgage prepayment charges, etc. (2) Only one closing statement is necessary. (3) Property taxes are always prorated prospectively on a due date basis. (In private transactions, they are subject to negotiation between buyer and seller. See MCLA 211.2.) (4) Title insurance charges are not shown on the closing statement (they are billed separately to MDOT.) (5) You will be asked to advance small amounts of money to save us the cost of processing small checks to property owners. (These small amounts will be refunded to you on your monthly billings.)

You will receive the closing papers from our Lansing or Region office by U.S. mail. This closing package will include some or all of the following:

1. A deed ready for execution except for grantor's name and address (form 648)
2. A Release of Damages (form 652)
3. An Easement (form 638)
4. A Permit (form 640)
5. A Closing Statement (form 654)
6. A Copy of Option (form 645)
7. A Notice of Closing post card (post card to be returned to the Region office when closing is completed)
8. A Delay in Closing (a partially completed memorandum to be returned to the Region office when closing is delayed)
9. A Tax Proration Computation (form 741A)
10. A Division of Assessment (form 740) (attached to letter to Assessor)
11. A Bill of Sale (form 659)
12. A copy of the acceptance letter to the property owner(s)
13. A customer survey (to be presented to the seller at closing)

14. Notice to Quit (to be delivered to the owner upon completion of closing if owner is present at closing)

If we have copies, you may receive such items as:

- a. A Death Certificate
- b. Copy of Land Contract
- c. Release of Financing Statement

You may be required to obtain other documents that are not in the packet.

You should receive funds from the Michigan Department of Treasury about the same time you receive the closing package. You should start the preliminary work (contacting the sellers, updating title, checking property taxes and special assessments, etc.) immediately.

If you are unable to contact the parties necessary to initiate a closing within 10 days or to arrange a closing *date* within 30 days of the receipt of the funds and closing package, you are to *promptly* send back the “delay of closing” memorandum you received among the closing papers. Please cite the reason for the delay.

Once you have the funds, the following instructions should help you complete the necessary forms.

COMPLETING THE TAX PRORATION BREAKDOWN SCHEDULE (Form 741A)

- Item 1. The date title passes to MDOT. By law, title passes the date the deed is delivered and accepted. Usually this is the date the closing statement is signed. However, if the closing is completed by mail, the date on the closing statement and deed is probably different. We allow the escrow agent(s) to use their judgment as to the date the title passes in these cases.
- Item 2. Since we are acquiring the property by deed, check deed. The block marked Right of Entry or Possession and Use Agreement (P&U) are to be used only with special instructions. The block indicating Eminent Domain is for our use when we condemn property.
- Item 3. There will be a number typed in here when you receive the form unless it is a “total take.” The number shown is the “before” value of the property contained in our appraisal.
- Item 4. There will be a number typed in here when you receive the form unless it is a “total take.” The number shown is the value of the property after we acquire the part we need as shown in our appraisal.
- Item 5. There will be a number typed in here when you receive the form unless it is a “total take.” The number shown is the value of the property we are taking as shown in our appraisal. It will sometimes be different than the amount we are paying for the property. (If we settle with the owner for more money on the basis of an “administrative approval,” the amount we are paying for the property will be larger.) The purpose of this is to arrive at a realistic percentage of the property taxes that we should assume.
- Item 6. There will be a number typed in here when you receive the form. The number is the percentage of the property we are acquiring. If it shows 100%, this indicates we are buying the entire property in the tax description. **Care should be taken to assure that the tax description covers only the land being acquired or which was appraised in the “before” situation. If the tax description includes tracts of land in addition to the property appraised, the percentage numbers may be wrong. If we are acquiring only part of the property, you will not have the legal description of the entire property we considered in our appraisal. However, if it appears that the tax description covers additional land, you should contact the Region for a confirmation and correction. When you contact them, you will need to furnish them with a tax description so they can get a new “before” value corresponding with the tax description.**

NOTE: If the property has no summer tax, you will not have to complete Items 7, 8, 9, 10 & 11. You can skip directly to Item 12.

State's Portion of Year (summer tax)

- Item 7. Complete the date to indicate the due date of the summer tax you are refunding.
- Item 8. Copy the date from Item 1. This is the date title passes.
- Item 9. Turn the form over and find the date of closing on the chart. The first number you will find below the date applies to this computation. This is the number of days between July 1st and the date of closing. (Be sure you are on the line indicating City days on the left edge of the chart.)
- Item 10. This is the number immediately to the right of the number you just placed in Item 9. This is the number of days remaining until the next July 1st.
- Item 11. This is the number immediately below the two numbers you placed in the above two items. This is the percentage of the year left after the closing. (This number is calculated by dividing the number in Item 10 by 365 days.)

State's Portion of Year (winter tax)

- Item 12. Complete the date to indicate the due date of the winter tax you are refunding.
- Item 13. Copy the date from Item 1. This is the date title passes.
- Item 14. Turn the form over and find the date of closing on the chart. The second set of numbers you will find below the date applies to this computation. This is the number of days between December 1st and the date of closing. (Be sure you are in the line indicating County days on the left edge of the chart.)
- Item 15. This is the number immediately to the right of the number you just placed in Item 14. This is the number of days remaining until the next December 1st.
- Item 16. This is the number immediately below the two numbers you placed in the above two items. This is the percentage of the year left after the closing. (This number is calculated by dividing the number in Item 15 by 365 days.)

Computation of Refund Due

(Summer Tax)

First blank: Fill in the amount of the summer tax.

Second blank: Copy the number in Item 6.

Third blank: Multiply the numbers in the first two blanks and place the results here.

Fourth blank: Copy the number in Item 11.

Item 17. Multiply the number in the third and fourth blanks and place the results here. This is the amount of the summer tax to be refunded to the property owner.

(Winter Tax)

First blank: Fill in the amount of the winter tax.

Second blank: Copy the number in Item 6

Third blank: Multiply the numbers in the first two blanks and place the results here.

Fourth blank: Copy the number in Item 16.

Item 18. Multiply the number in the third and fourth blanks and place the results here. This is the amount of the winter tax to be refunded to the property owner.

Total Refund Due

Add the numbers in Item 17 & 18 and place the results here. (This number will be placed in Item 19 on the Closing Statement).

COMPLETING THE CLOSING STATEMENT (Form 654)

Complete the blanks entitled Grantors, address, Township, City, and County.

To complete the items entitled Taking (1), Damages (2), (3), and Total (4), see the breakdown shown on the back of the option form. These numbers are broken down because the “Taking” is the amount we paid for the land and buildings and is the amount shown on the deed. The “Damages” are not subject to transfer tax and is the amount shown on the release of damages form you were furnished (if it applies). The blank entitled (3) is for miscellaneous compensable items.

Disbursements

- Item 5. Indicate the name of the mortgagee or the name of the land contract seller (vendor).

- Item 6. Indicate the amount deducted to secure a mortgage release (or to pay off a land contract vendor) for the property we are purchasing.

- Item 7. Use of this blank is optional. If your company is willing to pay for the recording fee and await reimbursement, by placing this amount on your monthly billing, it is not necessary to fill in this blank. If your company is not willing to advance this money, you have to deduct from the property owners proceeds. (They will be reimbursed by MDOT later).

- Item 8. Transfer Tax will be included with the initial escrow closing funds. (Transfer tax is normally a tax the seller pays. However, when we acquire property we are required to pay all expenses the sellers incur in transferring title to us.

- Item 9. This is a miscellaneous item. We pay for all expenses necessary for the property owner to transfer title to us. Some items that could appear here are attorney charges for preparation of a power of attorney, mortgage release preparation, etc.

- Item 10. Indicate any unpaid taxes that have to be deducted from the compensation to clear title. (All unpaid taxes are deducted. We do not use the tax proration refund as an offset against unpaid taxes. Therefore, they are deducted here and credited back on the reverse side.)

- Item 11. Indicate any special assessments that have to be deducted from the compensation to clear title. This is where you should show water and sewer bills. If we are removing improvements that are serviced with local water and sewer services, you should be furnished with a final water bill. If there is a problem you should contact the Region. Note the copy of the letter to the water authority in the closing package.

- Item 12. Add items 6 through 11 and place the results here.
- Item 13. Subtract Item 12 from Item 4. This is the balance of the compensation to be paid to the seller(s). **If your company is not going to advance any money for miscellaneous expenses, this is the amount paid to the seller at closing. This amount is then transferred to line 14. If your company will advance money to us for miscellaneous expenses, you will have to complete the back of the form before filling in line 14.**

Reimbursement - Incidental Expenses

(The back side of the form)

- Item 15. This item should be used only if your company does not advance the recording fee. This is where the seller is reimbursed if it was deducted on the front of the form. If your company advanced the fee, it is placed on your monthly billing for reimbursement to you. If your company did advance this fee, I suggest that you place a note here "paid by escrow agent."
- Item 16. This item should be used only if your company did not receive or does not advance the transfer tax. Same instructions as the recording fee.
- Item 17. Same instructions as item 15 & 16.
- Item 18. Fill in any mortgage prepayment penalty. This is seldom, if ever, used any more.
- Item 19. Complete the "Tax Proration Breakdown Schedule" and place the amount shown as "Total Refund Due" in this item.
- Item 20. Add items 15 through 19 and place the results here. If your company is advancing all the amounts shown on the back of the form, add this amount to item 13 on the front and place it in Item 14 on the front of the form. **The amount on Item 14 must be the amount the seller has when they leave the closing.**

Signatures and Additional Information

The closing agent signs under the statement "I certify this is a true and correct closing statement," indicating his/her title and the date.

If MDOT owes money to the seller (incidental expenses shown on line 20), indicate the name and address of the payee.

Be sure to have the seller(s) sign the front of the form indicating they received the amount on Item 14.

Complete the block at the bottom of the form for our identification.

COMPLETING THE CLOSING

Delivering the “Notice to Quit”

The “Notice to Quit Termination of Tenancy -- Landlord-Tenant” form may be included in the packet of forms you received for the closing.

The second page of this form is to be given to the property owner, if present at closing. The “Proof of Service” portion of the first page must be completed by the closing agent and returned to MDOT.

Customer Survey

A property owner survey and a self addressed, stamped envelope will be provided in the closing package. Please give it to the property owner to complete and mail later.

Notifying Our Region Office

You were furnished with the closing papers, a card to be returned to the Region office indicating that the closing is completed. We need this information as soon as possible, so we can take any actions necessary to take possession.

Notifying the Assessor

The State of Michigan is tax exempt. Therefore, it is necessary to notify the local tax assessor that we have acquired title and request that they remove it from the tax roll. State law requires that we notify the assessor by registered mail or record our instrument prior to December 31st, in order to be tax exempt for the following tax year. We do not routinely use the registered mail process. We rely on recording our instruments. Therefore, if you close a transaction just before December 31st, please take the extra effort to record the deed as soon as possible.

You were furnished with the closing papers, form 4260 (Property Transfer Affidavit), and a letter from our Lansing office to the local assessor. Attached to this letter is a small card for the assessor to complete and return to our Lansing office. You are to **date the form and letter and attach a copy of the executed deed** and forward them to the tax assessor. (It might be a good idea to attach one of your business cards to the letter, because sometimes the assessor has questions but doesn’t know who sent the letter.)

Transmitting File to Region & Recording Instruments

Closing papers should be forwarded to the Region as soon as possible, with copies of executed instruments, to give us notice that the closing is completed and to allow prompt reimbursement to the property owner for items withheld at closing. Send instruments to the Register of Deeds for recording, instructing them to return them to you. Once they are returned, send the title policy and recorded instruments to the Region.

The Title Policy

Schedule B1 of the Title Insurance Commitment outlines the requirements for issuing title policies. Within thirty (30) days after these requirements have been met, you shall issue a title policy reflecting the owner as the Michigan Department of Transportation.

IRS REPORTING

MDOT purchase transactions must be reported to the Federal Government the same as any private real estate transaction. This can be done by completing the proper forms or using an automated system.

The escrow agent is responsible for this action.

RELOCATION ESCROW PAYMENTS

You may be asked to hold money in escrow for payment of relocation costs of owners or tenants. These could be for Residential Moving Claims, Replacement Housing Payments, Purchase Down Payments, Replacement Rental Supplements, Incidental Closing Costs, Increased Interest, Business Move Payments, Business Re-Establishment, or Business Fixed “in Lieu of” Payments.

When you are asked to perform this service, you will receive explicit instructions regarding the documents or work that must be completed before you can release these funds to the relocatee. For instance, you might be required to wait until an inspection of the replacement is completed and/or a specific document is acquired. You will be notified by an MDOT employee/contractor when the requirements have been met and it is OK to release the money.

Below is an explanation of each of these payments:

Residential Moving Payment

The residential moving payment is to reimburse displaced persons for the cost of moving their personal property from the state acquired right of way to a replacement site, storage, etc. If the displaced persons move the items themselves, no documentation other than the signed claim form is necessary. If the move is performed by a professional moving company, a copy of the paid invoice or receipt is required in addition to the claim form

Replacement Housing Supplement

This payment supplements the difference between the amount displaced homeowners receive for the fair market value of their home and the amount of a comparable decent, safe, and sanitary replacement house. Required documentation includes the replacement dwelling certification form, purchase agreement, and a well and septic report (if applicable). In the case of new construction or house moving, a deed for the land and construction contract also may be necessary.

Replacement Rental Supplement

Replacement rental supplement makes up the difference between the rent at the dwelling from which the displaced person must relocate and the comparable decent, safe and sanitary replacement dwelling over a 42 month period. Required documentation includes replacement dwelling certifications, a copy of the new lease or a rent receipt, and well and septic report (if applicable).

Purchase Down Payment

Some displaced persons elect to use their replacement rental supplement (see above) as a purchase down payment on a house. This claim is documented with a replacement dwelling certification, a copy of the purchase agreement, and a well and septic report (when applicable).

Incidental Closing Costs

Incidental closing costs are payments for costs incidental to the closing on the displaced persons new house. An estimated closing statement prepared by the bank is the only documentation required in addition to the claim form.

Increased Interest Claim

This payment compensates the displaced home owners for the additional expenses they may incur if they must take out a new mortgage at a higher rate. The payment bridges the gap between the old and new rates over the period of time remaining on the existing mortgage. Necessary documentation includes copies of both the old and new mortgages, a copy of the deed, and a statement of the balance on the old mortgage.

Business Moving Payment

This payment reimburses displaced businesses for various costs incurred in the moving of personal property and other expenses associated with the relocation of the business. If the business moves their own items, the documentation provided includes an inventory of items moved and a cost estimate prepared by a professional mover. If a professional mover performs the move, a copy of the paid invoice or receipt must be provided with the inventory. There are some items incidental to the business move that may also be reimbursable as “moving” costs. All actual moving cost claims must be accompanied by copies of paid invoices or receipts.

Business Reestablishment Payment

This payment is for various expenses associated with the re-establishment of the displaced business at replacement site (primarily for the costs of making the replacement site suitable for the operation of the business). Receipts, paid invoices, and an explanation of costs incurred are required to document the claim.

Business Fixed Payment (“In Lieu of Payment”)

A business fixed payment is in lieu of any and all other relocation payments. The amount of the fixed payment is equal to the average net earnings of the business for the two years prior to the year in which displacement occurs. Necessary documentation includes copies of income tax forms for the two years prior to displacement, along with a request for a determination of eligibility for the fixed payment.

BILLING FOR SERVICES

Normal Billing

You should process a bill once a month for services rendered (and money advanced) for that month. All of the charges for any one parcel do not have to be included on the same bill. However, we are unable to pay for services until we have evidence that the services were rendered.

All billings for services by escrow agents are processed by the Region even if the services were requested by the Lansing office. Usually the Region Real Estate Secretary manages the billing process.

Special Request Billing

Sometimes we need you to furnish the services on specific properties that are not a part of an acquisition project. For example, we may need title information when we plan to sell properties we own in excess of our needs. We may also need to research title on railroads we own, or other miscellaneous situations.

When such requests are made, you will be given specific instructions regarding submitting bills.

PRORATION OF TAXES ON PUBLIC AGENCY ACQUISITIONS

Property taxes must be prorated in accordance with the provisions of Act 288, PA 1966. This act requires that property taxes be prorated as of the date title passes on a prospective, due date basis. (The public agency is responsible for payment of all taxes that become due and payable after the date title passes and before the property is removed from the tax roll).

This means that property taxes cover the year beginning with the date they become due (December 1st or July 1st) and ending the day before the next bill becomes due. Therefore, the bill due December 1st covers the period from that December 1st through the following November 30th. The bill due July 1st covers the period from that July 1st through the following June 30th.

This scenario should not be confused with local practices. Many areas of the state use other methods of prorating taxes. However, public agencies must follow the statutory method.

The proration is also complicated because we usually buy only parts of properties. Therefore, it is necessary to establish a percentage of the property being acquired. The “before” and “after” values shown on the top portion of form 741 A (Tax Proration Breakdown Schedule) indicates our method of arriving at this percentage.

Before you start the computation, you will need the amount of the last paid taxes. (The taxes that were due on the last December 1st and July 1st prior to the date title passes).

Example No. 1:

Closing date: September 18, 1994

The last winter taxes would be the December 1, 1993, tax, commonly referred to as the 1993 winter taxes.

The last summer taxes would be the July 1, 1994, tax, commonly referred to as the 1994 summer taxes.

The public agency would be responsible to pay the December 1, 1994, tax to the local taxing authority.

Example No. 2:

Closing date: February 12, 1994

The last winter taxes would be the December 1, 1993, tax. The last summer tax would be the July 1, 1993, summer tax.

The public agency would be responsible to pay the July 1, 1994, and the December 1, 1994, tax to the local taxing agency.

INCIDENTAL PAYMENTS OR EXPENSES

The terms “Incidental Payments or Incidental Expenses” are used by MDOT to refer to miscellaneous costs necessary to close a real estate transaction such as recording fees, prorated taxes, etc.

The term is used when MDOT purchases real estate and when the displaced persons are purchasing replacement properties. Confusion may take place because MDOT may be responsible for paying these costs in both situations. Therefore, when someone uses this term, it is important to know if you are talking about an MDOT purchase or a displacee’s purchase of a replacement property.

REQUIREMENTS FOR TITLE SEARCH REPORTS

There may be occasions when MDOT may ask for a title “search” rather than a title commitment. These are expected to be delivered at a reduced rate compared to title commitments, and accordingly are much more limited in liability.

The Title Search report is to be used by MDOT for information purposes only, and is not relied upon as evidence of title or for due diligence for any environmental issues.